



THE CITY OF SAN DIEGO
MAYOR JERRY SANDERS

M E M O R A N D U M

DATE: September 17, 2008

TO: Members of the City Council

FROM: Greg Levin, Comptroller

A handwritten signature in blue ink, appearing to be "G. Levin", written over a horizontal line.

SUBJECT: Use of City Council Infrastructure Funds

This memorandum is in response to City Councilmember Donna Frye's memorandum dated September 10, 2008 which concerns the appropriate use of Infrastructure funds. This memorandum is not intended to provide legal advice but instead describes our existing operational interpretation of the enabling legislation for infrastructure funds and related policy controls over their use.

The City's Infrastructure Improvement fund (10529) was created in Fiscal Year 2002 via ordinance 18964. The implementing ordinance established the purpose for the fund, it states in part:

"22. INFRASTRUCTURE IMPROVEMENT FUND (10529)

The Infrastructure Improvement Fund, allocated to the Mayor and eight Council Districts, is hereby appropriated for the purpose of financing capital improvements and major maintenance of streetlights, sidewalks, traffic signals, libraries, parks and recreation facilities, and roadways or other purposes as identified by the Mayor or individual Council District..."

The use of Infrastructure funds is further governed by the passage of the City's annual Appropriations Ordinance (FY09: O-19744) it states in part:

- (1) *Any carryover monies from the previous fiscal year in the Infrastructure Improvement Fund (10529) are hereby appropriated for the purpose for which said fund was created.*
- (2) *Funds from the Infrastructure Improvement Fund may be transferred and appropriated to the General Fund upon the direction of the Mayor for purposes identified by the Mayor for the Mayor's Infrastructure Improvement Fund or by*

the Council Districts for the individual Council Districts Infrastructure Improvement Funds.

Pending further clarification from the City Attorney regarding the use of the language **“or other purposes as identified by the Mayor or individual Council District.”** we interpret the last passage of Section 22 of Ordinance 18964, to mean that these funds are available for any governmental purpose and not limited solely to funding infrastructure. Additionally, we interpret the relevant sections of the current fiscal year appropriations ordinance to limit the use of these funds to activities generally considered to be “general fund” activities. Therefore, under current policy, at the direction of the Mayor or a Councilmember (subject to availability of funds within each respective politician’s allotment) can be used to supplement the appropriations of any existing general fund activity or a new activity that would typically be supported by the City’s General Fund. This is consistent with past practice since the inception of the fund in fiscal year 2002.

It is important to note that we believe that the Appropriation Ordinance limits our authority to transfer infrastructure funds outside of the General Fund. Requests to support City departmental expenses (such as staffing) or infrastructure improvements, (a street light or curb cuts), can be made by the Department of Finance while requests to fund activities of external organizations require additional authority.

Using Infrastructure Funds to Support Outside Organizations

While the majority of infrastructure funds are used to supplement existing City’s programs or activities in a given City Council District, we often receive requests from interested Councilmember who would like to grant infrastructure funds to support the activities of entities that legally separate from the City of San Diego. These requests include providing funding to these organizations and pay for “in kind services” (assuming the bills of legally separate entity or paying for City employees to staff a non-City event).

Examples of past requests include:

- (1) A non-profit organization that may already be engaged by the City to provide services on behalf of the City.*
- (2) A non-profit organization (or group of non-profit organizations) that is organizing a community festival.*
- (3) A neighborhood watch group in need of communications equipment.*
- (4) Providing police or public safety services at a community event.*

Under our current interpretation, we view these activities as possibly eligible for general fund support; however, we determined that in these scenarios, considerations beyond the eligibility of the funding source apply. Since the City is providing funds or “in-kind services” to a separate legal entity, sound stewardship of public funds, legal liability considerations and internal control necessitate a written agreement, reviewed by appropriate City departments and may need to be approved by the full City Council. Our rationale is based on the following:

- (1) If infrastructure funds are used to supplement a federally funded project, then federal regulations may apply to the use of those funds.
- (2) Services procured from a legally separate entity may warrant a competitive bidding process, and a legislative action is necessary to avoid the perception that the City is

- gifting public funds. Additionally, this ensures the opportunity for public participation and serves to further ensure that public funds and services are fairly awarded.
- (3) Depending on the nature and type of activity to be provided; an evaluation of the potential liability that could arise from that activity should be conducted.
 - (4) In general, proper stewardship of public funds requires that the benefit to the taxpayers and the responsibility of the grantee for perform to a certain standard. This requires that a written contract be established.

In closing, we generally allow transfers of infrastructure funds to supplement departmental budgets and/or to fund new service offerings from City departments. However, it is our position that when it is desired to provide funding to a legally separate agency a formal agreement should be in place to memorialize both parties' understanding of that agreement and to identify the services that are provided. We believe that under certain circumstances the City Council should approve these agreements.

The intent of this memorandum is to describe the current operating procedures in the Department of Finance for handling requests for transfers from the Infrastructure Funds. We look forward to an opinion from the City Attorney's Office regarding the use of these funds.

cc: Honorable Mayor Sanders
Jay M. Goldstone, Chief Operating Officer
Mary Lewis, Chief Financial Officer
Nader Tirandazi, Financial Management Director
Andrea Tevlin, Independent Budget Analyst
Michael J. Aguirre, City Attorney